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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
913,500	06/07/78	Masaru Iwanami, et, al.,	UWP1764

Burgess, Ryan & Wayne  
370 Lexington Ave.  
New York, N.Y. 10017

EXAMINER	
Rizzo	
ART UNIT	PAPER NUMBER
122	11

DATE MAILED:

MAILED

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

JUN 30 1980

GROUP 120

☒ This application has been examined.

☒ Responsive to communication filed on 03-04-80

☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☐ Notice of References Cited, Form PTO-892.
- ☐ Notice of Informal Patent Drawing, PTO-948.
- ☐ Notice of Informal Patent Application, Form PTO-152.
- ☐ \_\_\_\_\_

Part II SUMMARY OF ACTION

- ☒ Claims 1-12 are pending in the application.  
Of the above, claims 8-10 are withdrawn from consideration.
- ☐ Claims \_\_\_\_\_ have been cancelled.
- ☐ Claims \_\_\_\_\_ are allowed.
- ☒ Claims 1, 11 are rejected.
- ☒ Claims 2-7, 12 are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
- ☐ The formal drawings filed on \_\_\_\_\_ are acceptable.
- ☐ The drawing correction request filed on \_\_\_\_\_ has been ☐ approved. ☐ disapproved.
- ☒ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has  
☒ been received. ☐ not been received. ☐ been filed in parent application, serial no. \_\_\_\_\_  
filed on \_\_\_\_\_.
- ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
- ☐ Other

1. The claims are 1-12

2. Claims 8-10 are withdrawn from further consideration.

See Paper No. 9.

3. Claims 1 and 11 are again rejected as failing to comply with the requirements of 35 USC 112, 1st & 2nd par. Terms such as "an aryl group:", "an aroyl group:", "functional derivative radical thereof" "a heterocyclic group", are all both too broad and indefinite. In re Wiggins 179 USPQ 421,424.

4. Applicants traverse the rejection. As support for their position applicants cite the Scherberich decision (Ex parte Scherberich et al 20 USPQ 397 and Altermatt (Ex parte Altermatt). A reading of the Scherberich decision shows that the claims ~~103 USPQ 436~~ involved process claims whereas present. Claim 1 and 11 are product claim. The Altermatt case involved a dystuff case. As was stated in the last Office action the problem posed by the aforementioned terms is that they do not possess "fixed" meanings. Attention is again called to the Wiggins and cases cited previously. Moreover, and this cannot be minimized, the claimed compounds have as their utility antibacterial action. As such it cannot be stated that any and all variable would be equally operative, if operative at all. Also, as to the rejected term what is the point of attachment to be? This is obviously critical in an antibiotic. →

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compound. Thus applicants have failed to indicate what they regard as their invention.

An issue has been reached.


This rejection is made FINAL.

Rizzo:cvm

A/C 703

557-3032

5/28/80

  
NICHOLAS S. RIZZO  
EXAMINER  
GROUP ART UNIT 122